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August 29, 1997

Tony Buckley, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

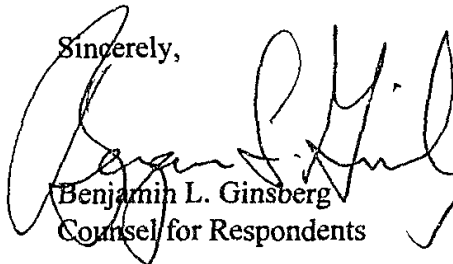
Re: MUR 4648 -- New York Republican Federal Committee, Jeffrey T. Buley
Gregory V. Serio, David R. Dudley, Luther Mook
and Mary G. Obwald

Dear Mr. Buckley:

Attached please find a supplemental affidavit from Jeffrey T. Buley as well as an Amended Response from the above-captioned respondents in this matter reflecting the changes to Mr. Buley's affidavit. These changes are necessitated by the discovery that the check to the Kings County Republican Committee was actually written on November 7, 1994, rather than on November 9, 1994, as reported by the Committee. A copy of the check is attached.

Thank you for your consideration and please call me if you have any questions.

Sincerely,


Benjamin L. Ginsberg
Counsel for Respondents

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4648
New York Republican Federal Committee and)
Lewis B. Stone, as treasurer)

**AMENDED RESPONSE OF THE NEW YORK REPUBLICAN FEDERAL COMMITTEE,
JEFFREY T. BULEY, GREGORY V. SERIO, DAVID R. DUDLEY,
LUTHER MOOK, AND MARY G. OBWALD
TO THE FEDERAL ELECTION COMMISSION'S
FACTUAL AND LEGAL ANALYSIS**

On behalf of the New York Republican Federal Campaign Committee ("the Party"), and Lewis B. Stone, as treasurer, Jeffrey T. Buley, Gregory V. Serio, David R. Dudley, Luther Mook, and Mary G. Obwald, this will respond to the Factual and Legal Analysis that accompanied the Federal Election Commission's ("Commission") reason to believe finding in the above-captioned matter.

I. INTRODUCTION

It is unlikely that a state party committee has ever had more extensive volunteer election day programs than the New York Republican Party. As a result, this matter appears to mark a case of first impression -- namely how does a state party correctly report the large volume of small expenditures that go into an election day program permitted under state law, especially in a large urban area such as New York City. The reporting violations alleged in the Factual and Legal Analysis all stem from this unprecedented volunteer election day program in 1994, which the Party put in place as a result of what its officials learned about the New York City ballot counting process in the 1992 and 1993 elections.

To ensure the fairness of the 1994 election results, the Party involved volunteers in historic proportions, with approximately 8,000 volunteer poll watchers, attorneys and others aiding the election day program. The issues in this MUR concern the payments given, in varying amounts, to these volunteers to cover food, transportation, and in some cases, baby-sitting for their election day activities. None of the volunteers received more than \$99. Affidavit of Jeffrey T. Buley ("Buley Aff.") at ¶ 17 (attached as Exhibit 1). Given that all the actual disbursements were under \$100 according the person in charge of dispensing the funds, *id.*, it is unclear what other reporting of the disbursements the Party should have done.

Since all the disbursements at issue went to cover the expenses of the volunteers on election day, all the funds were spent on generic party building activity. None of the funds were spent on any candidate specific activity. Buley Aff. ¶ 15. Therefore, 2 U.S.C. § 441a(d) is not implicated.

II. BACKGROUND

The experience of the New York Republican Party's current leadership began with election day activities in 1992. Although the Party has run Election Day activities generally for many years, that election saw Republicans in New York City particularly focused because of the campaigns of Senator Al D'Amato and the legislative and congressional candidates running in recently redrawn districts. The GOP leaders became particularly alert to possible improprieties when Democrats went to court on election day in an attempt to keep the New York City polls open two hours past their scheduled closing time. Party attorneys successfully opposed this motion in court, Buley Aff. ¶ 4, but that was only part of the story.

Senator D'Amato had a 60,000 vote lead on election night. But the following morning, Party attorneys were informed that approximately 150,000 unopened, uncounted paper ballots had been "discovered" throughout New York City. *Id.* This crisis galvanized the Party, and Republican attorneys volunteered to serve throughout the City in unprecedented numbers at the counting of the unopened paper ballots at the local boards of election. *Id.*

This presence proved to be necessary. For example, at the Manhattan Board of Elections, where many of the unopened ballots turned up, the Democratic Deputy Election Commissioner, William Perkins, announced in the counting room that registration checks for the persons casting the ballots would be bypassed to expedite the process. Party attorneys objected, and Perkins backed down. The registration checks led to the invalidation of 70 percent of the unopened paper ballots. Party officials became convinced that if they had not been present (which had been the case in the past), the election would have been stolen. *Id.* ¶ 5.

In 1993, with the Mayoral election approaching and the 1992 election day experience fresh in their minds, the Party became convinced of the need for a strong volunteer election day program. Buley Aff. ¶ 6. Party officials, realizing that Republicans had virtually abandoned parts of New York City since the election of John Lindsey in the 1960s, concluded that a strong Republican presence throughout New York City was essential. *Id.*

To prepare for the 1993 elections, the Party moved on several fronts, including convincing the New York City Board of Elections to institute the legally required but seldom used mail check of all registered voters. Performed for the first time in more than a decade, this uncovered more than 100,000 persons registered at addresses at which they no longer apparently lived. *Id.* Additional investigation prompted media articles about 1,400 names being registered

at one post office box, the registration of deceased persons, and the processing of 19,000 illegal registration forms. *Id.*; Exhibit 2. More abuses were uncovered by hearings of the New York State Senate Elections Committee. Exhibit 3.

While discovering the past abuses and correcting them was extremely important, Party officials knew that a Republican presence at polling places throughout the City on election day was absolutely essential to ensure an honest vote in the 1993 election. Buley Aff. ¶ 6. New York Election Law permits a party to have three poll watchers at an election district polling station. N.Y. Elec. Code § 8-500(1). New York City has approximately 5,500 election districts. As a result, the Party recruited and trained over 10,000 poll inspectors and poll watchers, as well as approximately 400 attorneys to assist when problems arose. *Id.* ¶ 7. This program succeeded in placing Republicans in all the City's polling places for the first time in memory. *Id.*

Party officials believed that the key to being able to recruit all these volunteers was to make it as easy as possible for a person to take election day off from work. *Id.* ¶ 8. New York Election Law permits payments to poll watchers. N.Y. Elec. Code § 17-140. The New York State Board of Elections has specifically stated that "the payment of campaign workers for election day activities such as poll watching is permitted because it is for a campaign related activity, for a lawful purpose and not directly prohibited." Letter from Special Counsel Todd D. Valentine, attached as Exhibit 4.

As a result, the Party reimbursed its volunteers in varying amounts to cover such expenses as transportation, food, day care, and communications expenses. Buley Aff. ¶ 8. Party officials directed that no volunteer receive more than \$99 in expense money, and to the

knowledge of Jeffrey T. Buley, the Party's volunteer counsel who directed the election day program, "none did". *Id.*

The 1993 election day program was deemed a tremendous success, with Republicans appearing on election day in areas of the City where they had not been seen in decades, including communities traditionally "forgotten" by Republicans such as those in African-American, Hispanic, Asian and other minority communities. *Id.* ¶ 9. The volunteers also assisted in the post-election day operations when 100,000 uncounted and unopened paper ballots were again found on the day after the election, threatening Rudy Giuliani's 44,000 vote lead in the Mayor's race. Approximately 55,000 of those ballots were invalidated in the challenge process and Giuliani gained an additional 9,000 votes from the remaining 45,000 ballots. *Id.*

Party officials believed that the election day program in New York City played an integral role in the victories of 1992 and 1993, and the 1993 program with its 10,000 volunteers for the mayoral election became the template for the program instituted by the Party in 1994 and 1996. *Id.* ¶ 10.

The focus of the 1994 elections in New York was the gubernatorial campaign, although the election day program was designed to help all candidates on the ballot including federal candidates. *Id.* ¶ 11. The Party paid for the program out of its allocation account and reported the disbursement accordingly to the Commission. *Id.* The Party recruited and trained more than 8,000 poll watchers (the number was slightly lower than 1993, probably because there was no local election and because of a falling out between Mayor Giuliani and the Party over the Mayor's endorsement of Mario Cuomo over George Pataki). *Id.* ¶ 12.

The key to the recruitment of volunteers for the program, Party officials believed, was being able to make the process as easy as possible for the volunteers. This included reimbursing them for their costs of transportation, meal expenses, communications, and day care when necessary as permitted by New York law. *Id.* ¶ 13. The individual tasked by Party Chair William Powers with implementing and funding the election day program was Jeff Buley. After researching federal and state law and consulting with the Party's bank (Key Bank in Albany, N.Y.), Buley concluded there was no clear-cut answer, but that the best system for dispersing the funds to the volunteers was to have checks cut by the Party to a number of individuals. *Id.* ¶ 13.

Accordingly, to cover the election day expenses for the poll watchers and other volunteers, the Party wrote checks totaling \$55,000 in the following amounts: Buley, \$15,000; David Dudley, \$15,000; Mary Obwald, \$10,000; Luther Mook, \$5,000; and Greg Serio, \$10,000. *Id.* ¶ 14. Buley was counsel for the Party. *Id.* ¶ 1. Dudley was a former chair of the Rensselaer County Republican Party and a volunteer lawyer for the Party. Affidavit of David R. Dudley ("Dudley Aff.") ¶ 2. Obwald was an employee of the Party. Affidavit of Mary F. Obwald ("Obwald Aff.") ¶ 2. Serio was a volunteer attorney for the Party. Affidavit of Gregory V. Serio ("Serio Aff.") ¶ 2. Mook was chair of the New York Republican Asian Committee charged with outreach to the Asian community. (Attached collectively as Exhibit 5.) Each participated either in his or her role as an employee of the Party or as a volunteer for purposes of election day activities. Exhibit 5.

The disbursements of these funds to the five individuals was reported to the Commission on the Party's post-election report. The purpose was described as "election day expenses", and corrected to "GOTV -Travel Expense Reimbursement and Catering Costs" after the Party

received a letter from the Reports Analysis Division. All the expenditures were for volunteers, none of whom had a candidate specific role or message and did not advocate the election or defeat of any specific candidate. Buley Aff. ¶ 15.

The \$5,000 disbursement to the Kings County Republican Committee was used in part for the same election day program as the disbursements to the five individuals. Supplemental Affidavit of Jeffrey T. Buley ("Buley Supp. Aff.") ¶¶2,3. The Kings County Republican Committee is a county party committee created pursuant to N.Y. Elec. Code §§ 2-100, 2-104 whose reports are on file with the New York City Board of Elections. The Kings County organization is a separate political committee and not a part of the Party under New York law. The \$5,000 disbursement to the Kings County Republican Committee on the day after the 1994 election came on November 7, 1997 and was misreported on the state Party's post election report as November 9, 1997 (a copy of the check is attached to Mr. Buley's amended Affidavit). The check was cashed on election day November 8, 1997 and was intended to cover election day expenses of a poll watcher program in Kings County. Some of the funds were also used to cover the expenses of volunteers counting ballots after the November 8 election. Buley Aff. ¶ 16. The KCRC needed the funds to pay for its participation in the post-election counting and challenging, with Brooklyn being perhaps the most difficult section of New York City for Republicans. *Id.*

Under Mr. Buley's program, each of the individuals, except Luther Mook, cashed the check made out to him or her at the Key Bank and gave the money to Mr. Buley, who proceeded to New York City with the \$50,000 in cash for disbursement to the poll watchers and other volunteers. *Id.* ¶ 17; Exhibit 5, ¶ 3; Mook Aff. ¶ 3. Mr. Mook disbursed the funds on his own pursuant to the directions of Mr. Buley. The KCRC cashed its \$5,000 check on election day.

See attached Buley Supp. Aff. To the best of Mr. Buley's knowledge and belief, and pursuant to his directions, all the money was disbursed to the approximately 10,000 volunteers and no volunteer received more than \$99 from the Party for his or her participation in the election day program. Buley Aff. ¶ 17.

In 1996, because of the races on the ballot, the election day program was smaller than in 1994. Again the focus was on aiding all Republican candidates on the ballot by helping to achieve an honest vote and count. *Id.* ¶ 18. The Party paid for the program out of its allocation account and reported the disbursements accordingly to the Commission. *Id.* The Party again contacted its list of more than 8,000 poll watchers to recruit volunteers for 1996. This effort was not as successful as in 1993 and 1994. *Id.*

Again, the key to the program, Party officials believed, was being able to make the process as easy as possible for the volunteers. This again included reimbursing them for their costs of transportation, meal expenses, communications, and day care when necessary as permitted by New York law. *Id.* ¶ 19. The individual again tasked by Party Chair William Powers with implementing and funding the election day program was Mr. Buley. *Id.* Since no objections other than the purpose used on the FEC report had been raised, Mr. Buley implemented virtually the same election day program he had put in place in 1994, with the exception that the Party was now using Trustco Bank in Schenectady, N.Y. *Id.*

To cover the 1996 election day expenses for the poll watchers and other volunteers, the Party wrote checks totaling \$22,500 in the following amounts: Buley, \$3,000; J. Brendan Quinn, \$3,000; Mary Obwald, \$2,500; William D. Powers, \$3,000; Jason Powers, \$3,000; Kenneth

Dippel, \$3,000; Lisa Herbst Ruggles, \$2,500, and Darryl Fox, \$2,500. *Id.* ¶ 20. All were either employees or campaign volunteers of the Party for purposes of election day activities.

The disbursements of these funds to the eight individuals were reported to the Commission on the Party's post-election report. *Id.* ¶ 21. The purpose was mistakenly described as "election day expenses" as a result of a bookkeeper at the Party inadvertently copying the purpose from the original 1994 report and not the amended purpose sent to the Reports Analysis Division in 1995. *Id.* ¶ 21. The incorrect description was amended as soon as the error was brought to the Party's attention. All the disbursements were for volunteers, none of whom had a candidate specific role or message and did not advocate the election or defeat of any specific candidate. *Id.*

Under Mr. Buley's program in 1996, each of the individuals endorsed the checks and turned them over to Mr. Buley, who then cashed them at the Trustco Bank. *Id.* ¶ 22. He proceeded to New York City with the \$22,500 in cash for disbursement to the poll watchers and other volunteers on election day. *Id.* To the best of Mr. Buley's knowledge and belief, and pursuant to his directions, all the money was disbursed to the volunteers and no volunteer received more than \$99 from the Party for his or her participation in the election day program. *Id.*

III. LEGAL ANALYSIS

A. 1994 Post-Election Report

The Factual and Legal Analysis first raises the issue of the purpose for the \$60,000 in disbursements, originally described as "election day expenses". When informed by RAD that this

description was insufficient, the Party changed the purpose to comply with 11 C.F.R.

§ 104.3(b)(3)(i)(B).

The Analysis goes on to insinuate, without elaboration, that "information in the Commission's possession" suggests the funds went for "walking around money". The genesis of this description is not clear. What is clear is that the funds were spent on election day activities that the New York Board of Elections, in response to a direct inquiry on the propriety of the expenditures, found to be "permitted because [they are] for a campaign related activity, for a lawful purpose and not directly prohibited." Letter from Todd D. Valentine, attached as Exhibit 4.

The amended purpose filed by the Party in 1995 is perhaps not artful, but it does comply with 11 C.F.R. § 104.3(b)(3)(i)(B). While the suggested "purposes" from the regulation are not precisely repeated on the Party's amended report, the description of "travel expense reimbursement" and "catering costs" does fall within the safe harbor provided by the regulation. And the amended purpose does accurately describe the Party's election day program as described on pages 1-9, supra.

The Analysis goes on to draw the puzzling conclusion that the individuals who received the checks at issue did so in their professional job capacities and not as campaign activists, thus somehow invalidating the disbursement. Without further explanation, it is difficult to ascertain the Commission's point. Nonetheless, the affidavits from each individual state that he or she was either administering the program (Buley) or volunteering for the Party as part of the election day program. Buley Aff. ¶ 14; Exhibit 5. Because all the information required by the Act was reported and because the program is permissible under New York law, there is no reason to

believe that Jeffrey T. Buley, Gregory V. Serio, David R. Dudley, Mary F. Obwald, Luther Mook or the KCRC violated 2 U.S.C. § 432(h)(1).

Under no possible reading of this program can any of the expenditures be found to fall under 2 U.S.C. § 441a(d). This election day, poll-watcher, legal protection program did not mention any individual candidate. It was designed, and did, benefit each and every candidate on the ballot by ensuring that the voting and counting process was honest. Placing Republican poll watchers in every polling place is not advocating the election or defeat of any specific candidate. No violation of 2 U.S.C. § 441a(d) occurred.

As for the program itself, all disbursements that should have been reported were reported. All disbursements that were a part of this program that were greater than \$200 were reported by the Party, and the public and Commission received all the information required by the Act and the regulations. Because all disbursements of greater than \$200 were reported, any violations are highly technical in nature. The reality is that no poll watcher or volunteer received more than \$99 of the \$55,000, according to the person in charge of the program. Buley Aff. ¶ 17. Accordingly, the Party did not have to report the ultimate recipients of the funds, so there is no violation of 2 U.S.C. §§ 434(b)(5)(A) and (6)(B)(i) and 11 C.F.R. §§ 104.3(b)(3)(i), (viii), (ix).

The Party may be in technical non-compliance because it never set up a separate petty cash account for these disbursements, as it may under 2 U.S.C. § 432(h)(2).¹⁴

As noted previously, the funds sent to the Kings County Republican Committee on the day after election did not involve an advance. The check was written on November 7, and not on November 9 as erroneously reported by the Party. The KCRC is on file with the State Board of

¹⁴ The respondents are willing to enter into pre-probable cause conciliation pursuant to 11 C.F.R. § 111.18(d).

Elections in Albany and the New York City Board Of Elections. Accordingly, there was no violation of 2 U.S.C. § 441b(a).

B. 1996 Post-Election Report

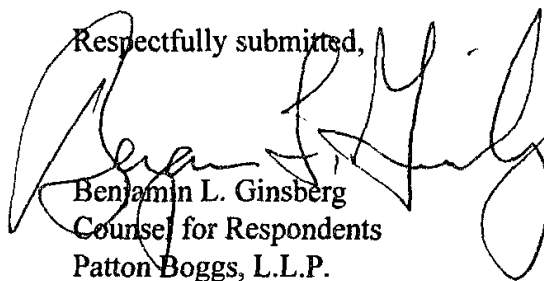
While the Commission found a knowing and willful violation concerning the misreporting of the purpose for the disbursements in the 1996 program, the explanation is much more benign. The 1996 program was modeled on the successful 1994 program, with the disbursements to the eight individuals who received checks reported to the Commission on the Party's post-election report. Regrettably, the purpose was mistakenly described as "election day expenses" after a bookkeeper at the Party inadvertently copied the description from the original 1994 report and not the amended description submitted after the Party received the letter from the Reports Analysis Division. Buley Aff. ¶ 21. The incorrect description on the 1996 report was amended as soon as the error was brought to the Party's attention. The Party respectfully submits that this was not a knowing and willful violation since the mistake was totally inadvertent and immediately corrected.

All the disbursements were for the expenses of poll watchers and other volunteers on election day; there were no expenditures for any specific candidate and none advocated the election or defeat of any specific candidate. *Id.* As with the 1994 election day program, all the expenditures were less than \$100, according to the person in charge of the program. *Id.* ¶ 22.

IV. CONCLUSION

For the reasons cited above, respondents respectfully request that the Commission find no probable cause that a violation occurred. To the extent the Commission does find a violation of the technical reporting issues cited in the Factual and Legal Analysis, the respondents are willing to enter into pre-probable cause conciliation.

Respectfully submitted,



Benjamin L. Ginsberg
Counsel for Respondents
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Jeffrey T. Buley

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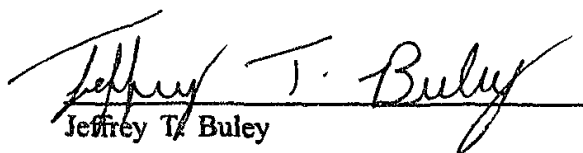
MUR 4648

SUPPLEMENTAL AFFIDAVIT OF JEFFREY T. BULEY

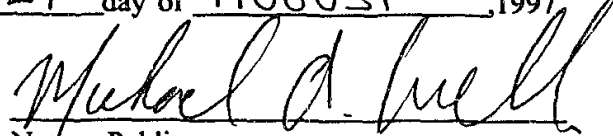
Jeffrey T. Buley, being duly sworn, deposes and states that:

1. I prepare this affidavit in order to amend my previous affidavit submitted in this matter.
2. In paragraph 16 of my previous affidavit, I stated that "The \$5,000 disbursement to the Kings County Republican Committee was not a part of the Party's election day program." This statement was not correct.
3. Upon further analysis of the \$5,000 contribution to the Kings County Republican Committee, it now appears that some of the funds were used as a part of the election day poll watching operation with the balance of funds used for the counting of paper ballots as described in paragraph 16 of my previous affidavit.
4. My previous incorrect statement was based upon my personal memory of the Kings County Republican Committee purchasing meals for paper ballot counting volunteers and the understanding that the contribution to the Kings County Republican Committee was made on

November 9, 1994. A review of the \$5,000 contribution check (attached), however, revealed that the check was dated November 7, 1994 (one day before election day). New York Republican State Committee accountants mistakenly transcribed the seven as a nine on Schedule H4. An amended report will be filed.


Jeffrey T. Buley

SUBSCRIBED AND SWORN to before me this 27th day of AUGUST, 1997


Notary Public
MICHAEL A. AVELLA
Albany County
Reg # 02AV5077467
Exp 5/12/99

My Commission Expires: 5/12/99

ALLOCATION ACCOUNT

315 STATE STREET
ALBANY, NY 12210

3333

29-7-213

EXPLANATION	AMOUNT
72	

DAY MOUNT

FIVE THOUSAND DOLLARS

CHECK
AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NUMBER	DOLLARS
11/17/64	Kings Canyon Ref Comm			

\$5000
100

**KEY BANK OF NEW YORK
PARK OFFICE ALBANY, NY 12210**

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William Davis

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11/09/94
PAYOR BANK 11/08/94
HERSTEAD, N.Y.
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